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NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION; THE
COMMISSIONER OF THE NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL
PROTECTION; AND THE
ADMINISTRATOR OF THE NEW JERSEY
SPILL COMPENSATION FUND,

Plaintiffs,

v.

RICHARD PASCALE, INDIVIDUALLY;
IDEAL COOPERAGE, INC.; 39 NEW YORK
AVENUE DEVELOPMENT LLC; 39 NEW
YORK AVE LLC; 3-25 NEW YORK AVE.
CORP.; "ABC CORPORATIONS 1-10"
(Names Fictitious); and "XYZ
CORPORATIONS 1-10" (Names Fictitious),

Defendants.

SUPERIOR COURT OF
NEW JERSEY
LAW DIVISION
HUDSON COUNTY

DOCKET NO. L-2617-15

CIVIL ACTION

**CONSENT JUDGMENT
BETWEEN PLAINTIFFS AND
DEFENDANTS 39 NEW YORK
AVENUE LLC AND 39 NEW YORK
AVENUE DEVELOPMENT LLC**

This matter was opened to the Court by Christopher S. Porrino, Attorney General of New Jersey, attorney for plaintiffs the New Jersey Department of Environmental Protection ("DEP" or the "Department"), the Commissioner of the New Jersey Department of Environmental Protection ("Commissioner"), and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") (sometimes referred to herein individually as "Plaintiff" and collectively as "Plaintiffs"), Matthew D. Orsini, Deputy Attorney General, appearing; and Norris, McLaughlin

& Marcus, P.A., attorneys for defendant 39 New York Avenue Development LLC (“Development”), Martha N. Donovan, Esq., appearing; and Hyland Levin LLP, attorneys for defendant 39 New York Ave LLC (“NY Ave.”), Robert S. Baranowski, Jr., Esq., appearing, (Development and NY Ave. together, the “Settling Defendants”); and the Plaintiffs and the Settling Defendants (together, the “Parties”) having amicably resolved their dispute before trial:

I. BACKGROUND

1. On June 22, 2015, the Plaintiffs initiated this action by filing a complaint (“Complaint”) against the Settling Defendants, among others, pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24 (“the Spill Act”), the Water Pollution Control Act, N.J.S.A. 58:10A-1 to -35, and the common law.

2. The properties that are the subject matter of the Complaint were subdivided into two adjoining parcels in 1982, and consist of 39 New York Avenue (singly, the “Upper Lot”) and 3 New York Avenue (singly, the “Lower Lot”) in Jersey City, Hudson County, New Jersey, also known as Lots 35 and 36, respectively, of Block 6001 on the Tax Map of Jersey City (together, the “Property”). The Upper Lot lies immediately to the west of the Lower Lot, and together, the two lots consist of approximately 4.5 acres. The site consists of the Property as well as all other areas where any hazardous substances and pollutants discharged therefrom have come to be located (the “Site”), which the Department has designated as Program Interest No. G000004613.

3. Plaintiffs, in their Complaint, seek reimbursement of all cleanup and removal costs that they allegedly incurred, and will incur, to Remediate the Site, but not damages for any natural resource of this State that has been, or may be, injured by the discharge of hazardous substances

and pollutants at the Property (“Natural Resource Damages or “NRD”), as well as injunctive and other relief.

4. The Settling Defendants subsequently filed responsive pleadings, including a motion to dismiss filed by NY Ave., in which they denied liability, and asserted various defenses to the allegations contained in the Plaintiffs' Complaint.

5. By entering into this Consent Judgment, the Settling Defendants do not admit any liability arising from the transactions or occurrences the Plaintiffs allege in the Complaint.

6. The Plaintiffs allege, and the Settling Defendants deny, that "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., have been "discharged" at the Upper Lot within the meaning of N.J.S.A. 58:10-23.11b.

7. The Plaintiffs further allege, and the Settling Defendants further deny, that "pollutants," as defined in N.J.S.A. 58:10A-3n., have been "discharged" at the Upper Lot within the meaning of N.J.S.A. 58:10A-3e.

8. Plaintiffs have not alleged that either of the Settling Defendants, themselves, discharged any “hazardous substances” or “pollutants” at the Upper Lot, but aver that Settling Defendants are the current and prior owners, respectively, of the Upper Lot on which other entities or persons allegedly discharged “hazardous substances” or “pollutants.”

9. From approximately 2000 through 2002, the Department performed a remedial investigation pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E, during which the Department investigated the nature and extent of the contamination at the Site.

10. Sampling results from the remedial investigation revealed the presence of various pollutants and hazardous substances at concentrations exceeding State cleanup criteria in the

ground water, sediments and soils at the Property.

11. NY Ave. acquired the Upper Lot via tax sale certificate foreclosure by way of Final Judgment entered in the Superior Court of New Jersey, Hudson County, Docket No. F-9491-07, on September 3, 2008.

12. On June 27, 2012, NY Ave. satisfied a New Jersey Spill Compensation Fund Lien on the Property in the amount of \$44,078.03. A warrant of satisfaction for this lien was issued by Plaintiff Administrator and filed on August 7, 2012.

13. NY Ave. conveyed the Upper Lot to Development on October 2, 2012. As of the execution of this Consent Judgment, Development is the current owner of the Upper Lot.

14. Between September 2008 and October 2012, Plaintiffs incurred \$12,001.78 in cleanup and removal costs for the Property. Subsequent to Development's purchase of the Upper Lot, Plaintiffs incurred approximately \$32,818.75 in cleanup and removal costs for the Property (of which the Upper Lot comprises approximately 29%).

15. The Parties to this Consent Judgment recognize, and this Court by entering this Consent Judgment finds, that the Parties to this Consent Judgment have negotiated this Consent Judgment in good faith; that the implementation of this Consent Judgment will avoid continued, prolonged and complicated litigation; and that this Consent Judgment is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Consent Judgment, it is hereby **ORDERED and ADJUDGED**:

II. JURISDICTION

16. This Court has jurisdiction over the subject matter of this action pursuant to the Spill Act, the Water Pollution Control Act, and the common law. This Court also has personal jurisdiction over the Parties to this Consent Judgment, solely for the purposes of implementing this Consent Judgment and resolving the underlying litigation.

17. The Parties to this Consent Judgment waive all objections and defenses they may have to the jurisdiction of this Court, or to venue in this County. The Parties shall not challenge the Court's jurisdiction to enforce this Consent Judgment.

III. PARTIES BOUND

18. This Consent Judgment applies to, and is binding upon, the Plaintiffs and the Settling Defendants.

IV. DEFINITIONS

19. Unless otherwise expressly provided, terms used in this Consent Judgment that are defined in the Spill Act, the Water Pollution Control Act, or in the regulations promulgated under these acts, shall have their statutory or regulatory meaning. Whenever the terms listed below are used in this Consent Judgment, the following definitions shall apply for purposes of this Consent Judgment only:

"Consent Judgment" shall mean this Consent Judgment.

"Day" shall mean a calendar day unless expressly stated to be a working day.

"Development" shall mean 39 New York Avenue Development LLC and shall also include its respective officers, directors, members, employees, predecessors, parents,

successors, subsidiaries, trustees in bankruptcy, or receivers appointed pursuant to a proceeding in law or equity (“Related Entity”), but only to the extent that the alleged liability of any Related Entity for remediating the Upper Lot is based on its status and in its capacity as a Related Entity, and not to the extent that the alleged liability of the Related Entity with respect to the Upper Lot arose independently of its status and capacity as a Related Entity of Development.

“Future Cleanup and Removal Costs” shall mean all cleanup and removal costs, including direct and indirect costs, the Plaintiffs incur after the effective date of this Consent Judgment to Remediate the Site;

"Interest" shall mean interest at the rate established by R. 4:42 of the then current edition of the New Jersey Court Rules.

“Licensed Site Remediation Professional” or “LSRP” shall mean an individual who is licensed by the Site Remediation Professional Licensing Board pursuant to N.J.S.A. 58:10C-7.

“NY Ave.” shall mean 39 New York Ave LLC and shall also include its respective officers, directors, members, employees, predecessors, parents, successors, subsidiaries, trustees in bankruptcy, or receivers appointed pursuant to a proceeding in law or equity (“Related Entity”), but only to the extent that the alleged liability of any Related Entity for remediating the Upper Lot is based on its status and in its capacity as a Related Entity, and not to the extent that the alleged liability of the Related Entity with respect to the Upper Lot arose independently of its status and capacity as a Related Entity of NY Ave.

"Paragraph" shall mean a portion of this Consent Judgment identified by an Arabic numeral or an upper case letter.

"Party" or "Parties" shall mean Plaintiff DEP, Plaintiff Commissioner, Plaintiff Administrator, and the Settling Defendants.

"Past Cleanup and Removal Costs" shall mean all cleanup and removal costs, including direct and indirect costs, the Plaintiffs incur on or before the effective date of this Consent Judgment to Remediate the Site.

"Remediation" or "Remediate" shall mean all necessary actions to investigate and clean up or respond to any known, suspected or threatened discharge of hazardous substances or pollutants including, as necessary, the preliminary assessment, site investigation, remedial investigation and remedial action, provided, however, that "Remediation" shall not include the payment of compensation for damage to, or loss of, natural resources.

"Response Action Outcome" or "RAO" shall mean a response action outcome issued by an LSRP pursuant to N.J.S.A. 58:10C-14;

"Section" shall mean a portion of this Consent Judgment identified by a Roman numeral.

"Settling Defendants" shall mean Development and NY Ave.

"Site" shall have the definition ascribed to it on Section I, Paragraph 2 of this Consent Judgment.

"Upper Lot Remediation" shall mean the Remediation of hazardous substances or pollutants on or beneath the Upper Lot and all areas where any hazardous substance or pollutant discharged at the Upper Lot have come to be located, excluding hazardous substances or pollutants which migrated onto or beneath the Upper Lot from an off-site [lower case intended] location.

"Working day" shall mean a day other than a Saturday, Sunday, or State holiday. In computing time under this Consent Judgment, where the last day would fall on a Saturday, Sunday, or State holiday, time shall run until the close of business of the next working day.

V. PARTIES' OBJECTIVES

20. The Parties' objectives in entering into this Consent Judgment are to protect public health and safety and the environment by securing the Upper Lot Remediation by Development and by the Settling Defendants agreeing to reimburse the Plaintiffs for their Past Cleanup and Removal Costs, in return for the Plaintiffs dismissing with prejudice the Complaint against the Settling Defendants, agreeing to resolve all of their claims against the Settling Defendants concerning the Site, except any other of Plaintiffs' claims reserved herein, and providing Settling Defendants with statutory contribution protection.

VI. DEVELOPMENT'S COMMITMENTS

21. Within 30 days of the effective date of this Consent Judgment, Development shall pay the Plaintiffs \$13,127.50 pursuant to the attached invoice.

22. Development shall pay the amount specified in Paragraph 21 above by certified check made payable to the "Treasurer, State of New Jersey." Payment shall be made to the address referenced on the attached invoice. Development shall mail or otherwise deliver a copy of the payment and invoice to the Section Chief, Environmental Enforcement Section, Department of Law and Public Safety, Division of Law, Richard J. Hughes Justice Complex, 25 Market Street, P.O. Box 093, Trenton, New Jersey 08625-0093.

23. Development shall pay Plaintiff DEP for all Plaintiff DEP's oversight costs and/or annual remediation fees as periodically billed by Plaintiff DEP for the Upper Lot Remediation;

provided, however, that Development expressly reserves all rights provided to it pursuant to statutory, regulatory and common law to challenge those oversight costs and/or annual remediation fees.

24. Development shall perform the Upper Lot Remediation under the direct oversight of the Department under N.J.S.A. 58:10C-27 and N.J.A.C. 7:26C-14, and comply with all applicable laws and regulations, except as expressly modified herein, including but not limited to, the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29, the Administrative Requirements for the Remediation of Contaminated Sites (“ARRCS”), N.J.A.C. 7:26C and the Technical Requirements for Site Remediation (“Tech Rules”), N.J.A.C. 7:26E. At the sole discretion of the Department, the Department may adjust the Direct Oversight requirements pursuant to N.J.A.C. 7:26C-14.4.

25. At all times, Development shall ensure that each LSRP that it has hired for the Upper Lot Remediation makes all submissions concerning the remediation simultaneously to the Department and to Development.

26. Within 30 days after the effective date of this Consent Judgment, Development shall submit a Public Participation Plan pursuant to N.J.A.C. 7:26C-14.2(b)9, and within 60 days after the receipt of the Department’s written approval of the Public Participation Plan, Development shall implement the Public Participation Plan according to the approved schedule.

27. Within 90 days after the effective date of this Consent Judgment, Development shall submit a Case Inventory Document pursuant to N.J.A.C. 7:26E-1.6(a)3, a case status summary and a proposed remedial investigation completion schedule for Department approval.

28. Development shall provide the Department with a Remedial Action implementation schedule in its Remedial Investigation Report, which will be submitted at the completion of the Remedial Investigation for the Upper Lot. Development shall submit a Feasibility Study pursuant to N.J.A.C. 7:26C-14.2(b)2.
29. Development shall implement each remedial action the Department selects for the Upper Lot Remediation pursuant to the schedule approved by the Department and in the manner directed by the Department.
30. Development shall submit to the Department within 90 days after the effective date of the Consent Judgment a detailed cost review pursuant to N.J.A.C. 7:26C-5.10 and continue to submit a detailed cost review annually to the Department for the Upper Lot Remediation.
31. Development shall establish and maintain a remediation trust fund within 90 days after the effective date of the Consent Judgment, as required pursuant to N.J.A.C. 7:26C-14.2(b)(5), in an amount equal to the cost of the Upper Lot Remediation until the Department issues written authorization to terminate the remediation trust fund.
32. Development shall submit to the Department an annual remediation funding source surcharge within 90 days after the effective date of the Consent Judgment in the amount of one percent of the remediation trust fund, pursuant to N.J.A.C. 7:26C-5.9, and continue to pay the annual remediation funding source surcharge by the anniversary date that the surcharge is due under this paragraph each year until a final remediation document is issued for the Site.
33. Development shall obtain the Department's written approval prior to making any disbursements from the remediation trust fund, unless instructed otherwise by the Department.

VII. NY AVE.'S COMMITMENTS

34. Within 30 days of the effective date of this Consent Judgment, NY Ave. shall pay the Plaintiffs \$6,961.04 pursuant to the attached invoice.

35. NY Ave. shall pay the amount specified in Paragraph 34 above by certified check made payable to the "Treasurer, State of New Jersey." Payment shall be made to the address referenced on the attached invoice. NY Ave. shall mail or otherwise deliver a copy of the payment and invoice to the Section Chief, Environmental Enforcement Section, Department of Law and Public Safety, Division of Law, Richard J. Hughes Justice Complex, 25 Market Street, P.O. Box 093, Trenton, New Jersey 08625-0093.

VIII. PLAINTIFFS' COVENANTS & RELEASES

36. In consideration of the payment Development is making pursuant to Paragraph 21, Plaintiffs covenant not to sue and agree not to take administrative action against Development for Past Cleanup and Removal Costs. Also, provided Development completes the Upper Lot Remediation and obtains a RAO in accordance with the terms of this Consent Judgment, Plaintiffs covenant not to sue and agree not to take administrative action against Development for Future Cleanup and Removal Costs; provided, however, that the covenant not to sue provided by this paragraph shall not extend to Future Cleanup and Removal Costs to Remediate a discharge of a hazardous substance or pollutant at the Upper Lot which Development has an obligation to Remediate, but has failed to Remediate ("Failed Upper Lot Remediation").

37. In consideration of the Lien paid as referenced in paragraph 12 herein and in further consideration of the payment that NY Ave. is making pursuant to Paragraph 34 above, Plaintiffs

covenant not to sue and agree not to take administrative action against NY Ave. for Past Cleanup and Removal Costs and Future Cleanup and Removal Costs.

38. In further consideration of the payment the Settling Defendants are making pursuant to Paragraphs 21 and 34 above, and in consideration of Development undertaking the Upper Lot Remediation under Paragraphs 24 through 33 above, upon Settling Defendants' payment of the amounts set forth in Paragraphs 21 and 34 above, Plaintiffs will, within 30 days of Plaintiffs' receipt of the payment as set forth in paragraphs 21 and 34, dismiss, with prejudice, the Complaint against the Settling Defendants.

39. The covenant contained in Paragraph 36, subject to the carve out for Failed Upper Lot Remediation, shall take effect as to Development once Plaintiffs receive payment, in full, pursuant to Paragraph 21 and shall remain in effect unless Development fails to complete the Upper Lot Remediation and obtain an RAO.

40. The covenant contained in Paragraph 37 above shall take effect as to NY Ave. after Plaintiffs receive payment in full pursuant to Paragraph 34.

41. The covenant contained in Paragraph 36 above extends only to Development and not to any other person or entity.

42. The covenant contained in Paragraph 37 above extends only to NY Ave. and not to any other person or entity.

43. In addition to the foregoing, Plaintiffs acknowledge that, in this instance, in accordance with N.J.S.A. 58:10-23.11f22(a), NY Ave. and Development have no obligation to contribute towards natural resource damages - i.e. compensation for damage to, or the loss of, natural resources, or for the restoration of natural resources on or off the property in connection with the

discharge of a hazardous substance at the Upper Lot - pursuant to any statutory or civil common law, to any person, or to the State, as NY Ave. and Development:

- (i) acquired the Upper Lot after the discharge of the hazardous substance;
- (ii) did not discharge the hazardous substance, are not in any way responsible for the hazardous substance, and are not a corporate successor to the discharger or to any person in any way responsible for the hazardous substance or to anyone liable for cleanup and removal costs pursuant to section 8 of P.L. 1976, c. 141; and
- (iii) are not in any way responsible for the hazardous substances discharged at or from the Upper Lot prior to NY Ave.'s and Development's acquisition thereof and identified in the PA/SI; and
- (iv) have not, by contract, using the term of art "natural resource damages," expressly assumed the liability for the payment of compensation for damage to, or loss of, natural resources, or for the restoration of natural resources, that were injured by a discharge of a hazardous substance at the property.

IX. PLAINTIFFS' RESERVATIONS

44. Subject to the provisions of this Consent Judgment, the Plaintiffs retain all authority, and reserve all rights, to undertake any further remediation authorized by law concerning the Upper Lot or to direct Development to undertake any remediation authorized by law concerning the Upper Lot.

45. Notwithstanding any other provision of this Consent Judgment, the Plaintiffs reserve, and this Consent Judgment is without prejudice to, the Plaintiffs' right to sue or take administrative

action to compel Development to undertake additional Upper Lot Remediation, or to reimburse the Plaintiffs for additional costs and damages, if after Development obtains a RAO:

- a. Plaintiff DEP discovers conditions at the Upper Lot, previously unknown to Plaintiff DEP; or
- b. Plaintiff DEP receives information, previously unknown to Plaintiff DEP, in whole or in part; and

these previously unknown conditions or unknown information, together with any other relevant information, indicate that the Upper Lot Remediation is not protective of human health and safety, or the environment.

46. For the purposes of Paragraph 45, the information and the conditions known to the Plaintiffs shall include only information and conditions known the Plaintiffs as of the date a RAO is obtained for the Upper Lot.

47. The covenants contained in Paragraphs 36 and 37 above do not pertain to any matters other than those expressly stated. The Plaintiffs reserve, and this Consent Judgment is without prejudice to, all rights against the Settling Defendants concerning all other matters, including the following:

- i. claims based on the Settling Defendants' failure to satisfy any term or provision of this Consent Judgment;
- ii. liability arising from the Settling Defendants' past, present or future discharge or unsatisfactory storage or containment of any hazardous substance outside the Site;
- iii. liability arising from Development's discharge of any hazardous substance during the Upper Lot Remediation;

- iv. liability for any future discharge or unsatisfactory storage or containment of any hazardous substance by the Settling Defendants at the Upper Lot, other than as otherwise ordered or approved by Plaintiff DEP;
- v. criminal liability; and
- vi. liability for any violation by the Settling Defendants of federal or state law, rule or regulation - including but not limited to, the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29, ARRCs and the Tech Rules - that occurs during or after the Upper Lot Remediation.
- vii. As to Development only, Future Cleanup and Removal Costs should Development fail to complete the Upper Lot Remediation and obtain a RAO in accordance with the terms of this Consent Judgment and/or for a Failed Upper Lot Remediation.

X. SETTLING DEFENDANTS' COVENANTS

48. Settling Defendants covenant not to oppose entry of this Consent Judgment by this Court, or to challenge any provision of this Consent Judgment, unless the Plaintiffs notify the Settling Defendants, in writing, that they no longer support entry of the Consent Judgment.

49. The Settling Defendants further covenant, subject to Paragraphs 52 and 53 below, not to sue or assert any claim or cause of action against the State, including any department, agency or instrumentality of the State, concerning the Site, other than as necessary to seek enforcement of any rights or benefits accorded to the Settling Defendants under this Consent Judgment. This covenant shall include the following:

- a. any direct or indirect claim for reimbursement from the Spill Compensation Fund ("Spill Fund") concerning the Site; and
- b. any claim or cause of action concerning the remediation of the Upper Lot, including Plaintiff DEP's selection, performance or oversight of the remediation, or Plaintiff DEP's approval of the plans for the remediation, other than any claim or cause of action based on alleged unreasonable, arbitrary and/or capricious conduct by Plaintiff DEP.

50. The Settling Defendants' covenant not to sue or to assert any claim or cause of action against the State pursuant to Paragraph 49 above does not apply where the Plaintiffs sue or take administrative action against the Settling Defendant pursuant to Paragraphs 44, 45 and 47 above.

51. So as to avoid Plaintiffs' involvement in dispute resolution concerning whether a discharge of a hazardous substance or pollutant originated at, or whether contaminants migrated from a discharge that originated at, either the Upper Lot (for which Development has responsibility to Remediate) or the Lower Lot (for which the owner of the Lower Lot has responsibility to Remediate), Development agrees to submit any such dispute to binding, non-appealable arbitration for resolution. In order to ensure that any dispute is timely raised, Development shall provide copies of all remediation documents to the owner of the Lower Lot simultaneously with their submission to DEP. For this provision to become effective, Plaintiffs agree that in any future settlement with the owner of the Lower Lot, Plaintiffs will require in the settlement agreement that the owner of the Lower Lot provide copies of all remediation documents to Development simultaneously with their submission to DEP and that a dispute (if any) be submitted to binding non-appealable arbitration. Should a dispute be submitted to arbitration under this paragraph, Development and the owner of the Lower Lot shall be the only

parties to the arbitration. Under no circumstances shall any of the Plaintiffs be made a party to the arbitration, and the outcome of the arbitration shall not be binding on any of the Plaintiffs. Nothing in this paragraph affects the contribution protection provided by XIII.

XI. SETTLING DEFENDANTS' RESERVATIONS

52. The Settling Defendants reserve, and this Consent Judgment is without prejudice to, claims against the State of New Jersey, subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 to -12-3; the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 to 13-10; the New Jersey Constitution, N.J. Const. art. VIII, §2, ¶2; or any other applicable provision of law, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any State employee while acting within the scope of his or her office or employment under circumstances where the State, if a private person, would be liable to the claimant. Any such claim, however, shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a State employee as that term is defined in N.J.S.A. 59:1-3; nor shall any such claim concern the Upper Lot Remediation, including a claim based on Plaintiff DEP's selection of the remediation, or Plaintiff DEP's oversight or approval of Development's plans or activities relating to the remediation of the Upper Lot. The foregoing applies only to claims that the Settling Defendants may bring pursuant to any statute other than the Spill Act or Water Pollution Control Act, and for which the waiver of sovereign immunity is found in a statute other than the Spill Act or Water Pollution Control Act.

53. Nothing in this Consent Judgment shall be deemed to constitute preauthorization of a claim against the Spill Fund within the meaning of N.J.S.A. 58:10-23.11k. or N.J.A.C. 7:1J.

XII. FINDINGS & ADMISSIONS OF LIABILITY

54. Nothing contained in this Consent Judgment shall be considered an admission by the Settling Defendants, or a finding by the Plaintiffs, of any wrongdoing or liability on the Settling Defendants' part for anything the Plaintiffs have alleged or have actual knowledge of having occurred at the Site as of the effective date of this Consent Judgment.

XIII. EFFECT OF SETTLEMENT & CONTRIBUTION PROTECTION

55. Nothing in this Consent Judgment shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Judgment. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Judgment may have under applicable law.

56. Unless otherwise waived under paragraph 59 below, the Settling Defendants expressly reserve all rights, including any right to contribution, defenses, claims, demands, and causes of action that the Settling Defendants may have concerning any matter, transaction, or occurrence concerning the Site against any person not a Party to this Consent Judgment.

57. When entered, this Consent Judgment will constitute a judicially approved settlement within the meaning of N.J.S.A. 58:10-23.11f.a.(2)(b) and 42 U.S.C.A. § 9613(f)(2) for the purpose of providing protection to NY Ave. and Development from contribution actions. The Parties agree, and by entering into this Consent Judgment, the Court finds that NY Ave. is paying its fair share of the costs and damages asserted by the Plaintiffs in the Complaint and that it has no obligation to contribute toward natural resource damages, and that NY Ave. is entitled, upon fully rendering payment pursuant to Paragraph 34 of this Consent Judgment, to protection from contribution actions or claims for Matters Addressed in this Consent Judgment. "Matters

Addressed” shall mean those matters contained in this Consent Judgment, specifically, (a) Past Cleanup and Removal Costs, (b) Future Cleanup and Removal Costs, (c) natural resource damages and (d) the Upper Lot Remediation.

58. The Parties further agree, and by entering into this Consent Judgment, the Court finds that Development is paying its fair share of the costs and damages asserted by the Plaintiffs in the Complaint and that it has no obligation to contribute toward natural resource damages and that Development is entitled, upon fully rendering payment pursuant to Paragraph 21 of this Consent Judgment, to protection from contribution actions or claims for Matters Addressed in this Consent Judgment (defined in paragraph 57 above), except for Future Cleanup and Removal Costs. Development shall be entitled to protection from contribution actions or claims for Future Cleanup and Removal Costs upon completing the Upper Lot Remediation and obtaining a RAO in accordance with the terms of the Consent Judgment.

59. The Parties further agree that Plaintiffs will not oppose any motion or application by the Settling Defendants in any action in which the Settling Defendants seek the contribution protection this Consent Judgment is intended to provide. Plaintiffs further agree that they will require in any settlement that they reach with any other person for the Site, a provision that such person will not seek and waives all rights of contribution against Development and NY Ave. for the matters addressed in such settlement. Development and NY Ave for their part agree that they will not seek and will waive all rights of contribution against such person for the matters addressed in this Consent Judgment. Notwithstanding the foregoing, nothing herein operates as a waiver by Development or NY Ave. of their position that they are already legally entitled to contribution protection with regard to the Site.

60. In order for the Settling Defendants to obtain protection under N.J.S.A. 58:10-23.11f.a.(2)(b) from contribution claims for Matters Addressed in this Consent Judgment under N.J.S.A. 58:10-23.11f.a.(2)(b), the Plaintiffs published notice of this Consent Judgment in the New Jersey Register and on Plaintiff DEP's website on November 7, 2016, in accordance with N.J.S.A. 58:10-23.11e.2. Such notice included the following information:

- a. the caption of this case;
- b. the name and location of the Upper Lot;
- c. the name of the Settling Defendants; and
- d. a summary of the terms of this Consent Judgment.
- e. that there are 60 days to comment on the proposed Consent Judgment.

61. The Plaintiffs, in accordance with N.J.S.A. 58:10-23.11e.2, arranged for written notice of the Consent Judgment to all other potentially responsible parties of whom the Plaintiffs had notice as of the date the Plaintiffs published notice of the proposed settlement in this matter in the New Jersey Register in accordance with Paragraph 58 above.

62. Upon conclusion of the Plaintiffs review of any public comments received as a result of the notice described in Paragraphs 60 and 61 above, the Plaintiffs will submit this Consent Judgment to the Court for entry pursuant to Paragraph 77 below, unless they receive information that disclose material facts or considerations that indicate to them, in their sole discretion, that the Consent Judgment is inappropriate, improper or inadequate.

63. In any subsequent administrative or judicial proceeding initiated by the Plaintiffs for relief concerning the Site permitted under this Consent Judgment as set forth in Plaintiffs' Reservations under Paragraphs 44, 45 or 47, the Settling Defendants shall not assert, and may not

maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, the entire controversy doctrine or other defenses based upon any contention that such claims the Plaintiffs raise in the subsequent proceeding were or should have been brought in this case; provided, however, that nothing in this Paragraph affects the enforceability of this Consent Judgment.

XIV. GENERAL PROVISIONS

64. Site Access. In addition to the Department's statutory and regulatory authority to enter and inspect the Upper Lot, Development shall allow the Department and its authorized representatives access, upon reasonable written notice, to all areas of the Upper Lot to:

- a. Remediate the Upper Lot (but only if Development fails to complete the Upper Lot Remediation in accordance with the terms of this Consent Judgment);
- b. monitor Development's compliance with this Consent Judgment and the Upper Lot Remediation;
- c. perform any remedial investigation or remedial action for the Upper Lot that plaintiff DEP orders, and/or which Development is unwilling and/or unable to perform pursuant to the terms of this Consent Judgment; and
- d. assess, restore or replace, or oversee the assessment, restoration or replacement of, any natural resource and natural resource service of this State injured by the discharge of hazardous substances at the Site.

65. Development shall ensure that any sale or transfer of the Upper Lot is conditioned upon the Department and its authorized representatives having continuing access for the purposes stated in Paragraphs 24-33 above. This obligation shall cease upon the issuance of a Response Action Outcome for the Upper Lot Remediation.

66. The Plaintiffs enter into this Consent Judgment pursuant to the police powers of the State of New Jersey for the enforcement of the laws of the State and the protection of the public health and safety and the environment. All obligations imposed upon the Settling Defendants by this Consent Judgment are continuing regulatory obligations pursuant to these police powers.

XV. ACCESS TO INFORMATION

67. Upon receipt of a written request by one or more of the Plaintiffs, the Settling Defendants shall submit or make available to the Plaintiffs all information the Settling Defendants have concerning the Site, including technical records and contractual documents, provided that such non-privileged information requested by one or more Plaintiffs is not already in the possession or control of any Plaintiff.

68. The Settling Defendants may withhold information based on a claim of confidentiality or privilege for any information requested by the Plaintiffs pursuant to this Consent Judgment, provided that the Settling Defendants shall produce a privilege log in a manner consistent with the New Jersey Rules of Court detailing any information withheld on the basis of confidentiality or privilege. The Settling Defendants, however, agree not to assert any privilege or confidentiality claim to data related to Site conditions, sampling, or monitoring.

XVI. RETENTION OF RECORDS

69. The Settling Defendants shall preserve for a minimum of seven years after the effective date of this Consent Judgment, all data and information, including technical records, potential evidentiary documentation and contractual documents, in the Settling Defendants' possession or in the possession of its divisions, employees, agents, accountants, or contractors, which in any way concern the Upper Lot, despite any document retention policy to the contrary.

70. After the seven-year period specified in Paragraph 69 above, the Settling Defendants may advise Plaintiff DEP, in writing, that it will discard or destroy any information or documents that in any way concern the Upper Lot. Such written notice shall be accompanied by a description of the documents involved, including the name of each document, date, name and title of the sender and receiver and a statement of contents.

XVII. NOTICES AND SUBMISSIONS

71. Except as otherwise provided in this Consent Judgment, whenever written notice or other documents are required to be submitted by one Party to another, they shall be directed to the individuals at the addresses specified below, unless those persons or their successors give notice of a change to the other Parties in writing.

As to Plaintiffs DEP, Commissioner & Administrator:

New Jersey Department of Environmental Protection
Bureau of Case Assignment and Initial Notice
Mail Code 401-05H
401 East State Street, Fifth Floor
P.O. Box 420
Trenton, New Jersey 08625-0420

As to Defendant 39 New York Avenue Development LLC:

George Vallone

Daniel Gans
39 New York Avenue Development LLC
c/o Hoboken Brownstone Company
305 Coles Street
Jersey City, New Jersey 07310-1014

With a copy to

Edward A. Hogan
Norris, McLaughlin & Marcus
721 Route 202-206
P.O. Box 5933
Bridgewater, New Jersey 08807
eahogan@nmmlaw.com

As to Defendant 39 New York Avenue LLC:

Robert W. Keyser
Taylor and Keyser
76 E. Euclid Avenue, Suite 202
Haddonfield, NJ 08033

72. All submissions shall be considered effective upon receipt, unless otherwise provided in this Consent Judgment.

XVIII. EFFECTIVE DATE

73. The effective date of this Consent Judgment shall be the date upon which this Consent Judgment is entered by the Court.

XIX. RETENTION OF JURISDICTION

74. This Court retains jurisdiction over both the subject matter of this Consent Judgment and the Parties for the duration of the performance of the terms and provisions of this Consent Judgment for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Judgment, or to effectuate or enforce compliance with its terms, or

to resolve disputes, including any appeal from an administrative determination of a dispute between the Parties.

XX. MODIFICATION

75. Nothing in this Consent Judgment shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Judgment.

XXI. ENTRY OF THIS CONSENT DECREE

76. The Settling Defendants consent to the entry of this Consent Judgment without further notice.

77. Upon conclusion of the public comment period specified in Paragraph 60 above, the Plaintiffs shall promptly submit this Consent Decree to the Court for entry.

78. If for any reason the Court should decline to approve this Consent Judgment in the form presented, this Consent Judgment is voidable at the sole discretion of any Party, and the terms of the Consent Judgment may not be used as evidence in any litigation between the Parties.

79. Within 30 days of the Plaintiffs' receipt of the payment as set forth in paragraphs 21 and 34, Plaintiffs shall dismiss this action as to the Settling Defendants with prejudice.

XXII. SIGNATORIES/SERVICE

80. Each undersigned representative of a Party to this Consent Judgment certifies that he or she is authorized to enter into the terms and conditions of this Consent Judgment, and to execute and legally bind such Party to this Consent Judgment.

81. This Consent Judgment may be signed and dated in any number of counterparts, each of which shall be an original, and such counterparts shall together be one and the same Consent Judgment.

82. Each Settling Defendant shall identify on the attached signature pages, the name, address and telephone number of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Judgment. The Settling Defendants agree to accept service in this manner, and to waive the formal service requirements set forth in R. 4:4-4, including service of a summons.

SO ORDERED this day of , 2016.

MARY K. COSTELLO, P.J.Civ.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION

Dated:

By: _____
Kevin F. Kratina, Assistant Director
Enforcement & Information Support Element
Site Remediation and Waste Management Program

NEW JERSEY SPILL COMPENSATION FUND

Dated:

By: _____
Anthony J. Farro, Administrator
New Jersey Spill Compensation Fund

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

Dated:

By: _____
Matthew D. Orsini
Deputy Attorney General

39 NEW YORK AVENUE DEVELOPMENT LLC

Dated:

By: _____
George Vallone

By: _____
Daniel Gans

39 NEW YORK AVENUE LLC

Dated

By: _____
Robert W. Keyser, Esq.

Person Authorized to Accept Service on Behalf of Settling Defendants. See Paragraph 71.